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6 Attorneys for Plaintiff  
7 LIBERTY MUTUAL INSURANCE COMPANY

8 IN THE UNITED STATES DISTRICT COURT  
9  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 Liberty Mutual Insurance Company, ) Case No.: C 06 2022 SC  
13 )  
14 Plaintiff, ) JOINT CASE MANAGEMENT  
15 ) CONFERENCE STATEMENT;  
16 vs. )  
17 ) [PROPOSED] ORDER  
18 Michael T. Blatt, )  
19 )  
Defendant. )  
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The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

## 1 DESCRIPTION OF THE CASE

## 2

### 3 1. Brief description of the events underlying the action.

4 This is an insurance coverage action relating to Liberty's defense of  
5 defendant Michael Blatt in an underlying construction defect action.  
6 Defendant was an additional insured under a policy issued by Liberty to  
7 Schnabel Foundation. Subject to a reservation of rights, Liberty defended  
8 Blatt under the terms of an endorsement which provided that Blatt was an  
9 additional insured under the Liberty policy, but "only with respect to liability  
10 arising out of [Schnabel's] operations . . ." Schnabel obtained a defense  
11 verdict in the underlying action. Blatt paid the judgment entered against  
12 him. However, Liberty paid, under a reservation of rights, the amount of  
13 \$300,303.85 which reflected that portion of the judgment representing the  
14 fees and costs taxed against Blatt in the underlying action. Liberty filed the  
15 instant action to recover that amount, plus additional fees and costs which  
16 are not covered under the policy.

### 17 2. The principal factual issues which the parties dispute.

18 Plaintiff Liberty - No material facts are in dispute.

19 Defendant Blatt – Accounting for monies claimed by Liberty Mutual.

### 20 3. The principal legal issues which the parties dispute.

21 Plaintiff Liberty - The primary legal issues are Liberty's duty to defend  
22 Blatt in light of the defense verdict rendered in Schnabel's favor and  
23 Liberty's recovery of its payment, under a reservation of rights, of the fees  
24 and costs assessed against Blatt in the underlying action and any  
25 additional costs and fees which are not covered under the Liberty policy.  
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1           Defendant Blatt - Blatt alleges that Liberty had a duty to pay the  
2 \$300,303.85 awarded against the defendant due to a prevailing party  
3 attorney-fee clause as such attorneys' fees award are statutorily defined as  
4 costs. Blatt alleges that Liberty had a duty to pay \$303,303.85 as a  
5 "supplementary payment" under the terms of their policy, as a cost taxed  
6 against the insured and in accord with Prichard v. Liberty Mutual Ins. Co.  
7 (2000) 84 Cal.App.4th 890.

8  
9           4. Additional factual issues (e.g. service of process, etc.) which  
10 remain unresolved.

11           None.

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13           5. Parties which have not been served in this action.

14           None.

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16           6. Additional parties intended to join.

17           None.

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19           **ALERNATIVE DISPUTE RESOLUTION**

20           The parties are agreeable to the nonbinding alternative dispute  
21 resolution process.

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23           **DISCLOSURES**

24           The parties certify that they have made the following disclosures:

25  
26           1. Witnesses.

27           Michael Blatt

28           Ronald Foreman

1 Michael Barnette  
2 Experts in the underlying action  
3 Person Most Knowledgeable for Schnabel Foundation  
4 Rand L. Chritton  
5 Joseph D. Ryan  
6 Jacqueline Fagerlin  
7 Al Anolik  
8 Haig Harris  
9 Peter Kane  
10 Mary Kayglaspy

11  
12 2. Documents.

13 Foreman and Brasso's attorney billing statements  
14 Foreman and Brasso's files relating to the underlying action  
15 Transcripts in the underlying action relating to trial  
16 Pleadings in the underlying action and all documents on file  
therewith  
17 Non-protected, non-privileged portions of Liberty's claims file re  
18 the defense of Gabbert  
19 Schnabel Foundation files for the underlying action  
20 Ryan and Lifter files for the underlying action

21  
22 3. Damage Computations.

23 Liberty's damage computations are set forth in its motion for default  
24 judgment, a copy of which has been provided to defendant.  
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1           4. Insurance Agreements.

2           A copy of the policy at issue is attached to the complaint filed herein  
3 and thus is already in the possession of defendant.

5           **DISCOVERY**

6           The parties agree to the following discovery plan:

8           1. Documents. To the extent relevant documents in the parties'  
9 possession, custody and control have not yet been exchanged by the  
10 parties, each party will produce the documents in its possession within sixty  
11 (60) days of the case management conference. Documents obtained from  
12 the Marin County Superior Court, including trial transcripts, to the extent  
13 requested by both parties, shall be obtained and the costs split evenly  
14 between the parties.

16           2. Written Discovery. Written discovery shall be completed by  
17 June 1, 2007.

19           3. Witnesses. Depositions of any witnesses shall be completed  
20 by July 31, 2007.

22           4. Expert Witnesses. Any expert witness-related discovery shall  
23 be completed by August 31, 2007.

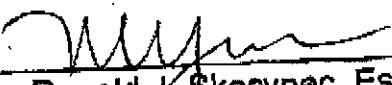
25           **DISPOSITIVE MOTIONS**

26           The parties agree that dispositive motions shall be set for hearing no  
27 later than October 1, 2007.

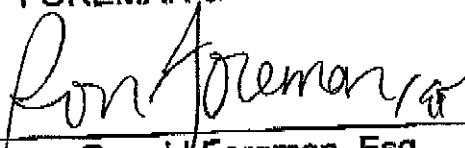
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**TRIAL SCHEDULE**

The parties request a trial date in or around November 15, 2007. The parties expect that the trial will last four (4) days.

DATED: November 17, 2006**PETERSON & BRADFORD, LLP**By: 

Ronald J. Skocypec, Esq.  
Melodee A. Yee, Esq.  
Attorneys for Plaintiff  
Liberty Mutual Insurance  
Company

DATED: November 10, 2006**FOREMAN & BRASSO**By: 

Ronald Foreman, Esq.  
Attorneys for Defendant  
Michael T. Blatt

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**CASE MANAGEMENT ORDER**  
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The Joint Case Management Statement and Proposed Order is  
hereby adopted by the Court as the Case Management Order for the case  
and the parties are ordered to comply with this Order.

In addition, the Court orders the following:

IT IS SO ORDERED.

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
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The Honorable Samuel Conti  
Judge of the United States  
District Court

**PROOF OF SERVICE**

1 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES  
 2

3 I am employed in the County of Los Angeles, State of California. I am over the  
 4 age of 18 and not a party to the within action; my business address is 100 North First  
 Street, Suite 300, Burbank, California 91502.

5 On November 20, 2006, I served the foregoing document described as:

6 **JOINT CASE MANAGEMENT CONFERENCE STATEMENT;  
 [PROPOSED] ORDER**

7 on interested parties in this action by placing a true and correct copy thereof enclosed in  
 8 a sealed envelope addressed as follows:

9 SEE ATTACHED MAILING LIST

10 **[X] (BY MAIL)**

11 [ ] I deposited such envelope in the mail at Burbank, California. The envelope was  
 mailed with postage thereon fully prepaid.

12 [X] As follows: I am "readily familiar" with the firm's practice of collection and  
 13 processing correspondence for mailing. Under that practice it would be deposited  
 14 with U.S. postal service on that same day with postage thereon fully prepaid at  
 15 Burbank, California in the ordinary course of business. I am aware that on motion  
 of the party served, service is presumed invalid if postal cancellation date or  
 postage meter date is more than one day after date of deposit for mailing in  
 affidavit.

16 Executed on November 20, 2006, at Burbank, California.

17 **[ ] (BY FACSIMILE)**

18 [ ] I served by facsimile a true copy of the above-described document. I am "readily  
 19 familiar" with this firm's practice of processing correspondence by fax. Under that  
 20 practice documents are placed in our fax machine and are processed and received  
 simultaneously at their destination. The above-referenced document(s) was placed  
 in the fax machine with all costs of faxing prepaid, directed to each party (using  
 their fax number), listed on the attached Service List. Once the document has been  
 transmitted, the fax machine provides a report indicating time of completion.  
 21 Executed on \_\_\_\_\_, at Burbank, California.

22 **[X] (STATE)** I declare under penalty of perjury under the laws of the State of California  
 that the above is true and correct.

23 **[ ] (FEDERAL)** I declare that I am employed in the office of a member of the bar of  
 24 this court at whose direction the service was made.

25   
 26 Liv Kirchoff  
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Ronald D. Foreman, Esq.  
Russell F. Brasso, Esq.  
FOREMAN & BRASSO  
Attorneys at Law  
930 Montgomery St., Suite 600  
San Francisco, CA 94133  
***Defendant***

\****Courtesy Copy***